

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION CIRCUIT/SUPERIOR COURT

CAUSE NO. ~~45D070209P~~ 001530

STATE OF INDIANA,)
)
) Plaintiff,)
 vs.)
)
 ECCP.TV, LLC,)
)
 CHARLES BLANKENSHIP,)
 individually, and as an owner)
 of ECCP.TV, LLC,)
)
 and)
)
 BRITTANY BLANKENSHIP,)
 individually, and as an owner)
 of ECCP.TV, LLC,)
)
 Defendants.)

FILED

SEP 10 2002

James M. Taylor
CLERK OF THE
MARION CIRCUIT COURT

**COMPLAINT FOR INJUNCTION, CONSUMER RESTITUTION,
DISGORGEMENT, CIVIL PENALTIES, AND COSTS**

The plaintiff, State of Indiana, by counsel Attorney General Steve Carter and Deputy Attorney General Justin G. Hazlett, files its Complaint for Injunction, Consumer Restitution, Disgorgement, Civil Penalties, and Costs against the defendant, ECCP.TV, LLC, and alleges and demands as follows:

Parties

1. The plaintiff, State of Indiana, is authorized to bring this action pursuant to Indiana Code §§ 24-5-0.5-4 and 24-4.7-5-2.

2. The defendant ECCP.TV is an Arizona limited liability company that has conducted business in Indiana via telephone solicitations to Indiana consumers.

3. The defendant Charles Blankenship is an owner of ECCP.TV, who at all times referenced in this complaint directed, controlled, and participated in the activities of defendant ECCP.TV, and who is personally responsible for the acts giving rise to the State's complaint.

4. The defendant Brittany Blankenship is an owner of ECCP.TV, who at all times referenced in this complaint directed, controlled, and participated in the activities of defendant ECCP.TV, and who is personally responsible for the acts giving rise to the State's complaint.

General Factual Allegations

5. The defendants, since at least July 6, 2001, have solicited telephone sales of products or services under the name ECCP.TV. As part of their telephone solicitations, the defendants have initiated telephone calls to Indiana consumers who did not expressly request such telephone calls.

6. During their telephone sales calls, the defendants, through their agents, employees, or representatives, have represented either that they will actively assist consumers in consolidating consumer debt or that they offer a low-interest-rate credit card that consumers can purchase.

7. In truth and in fact, in the defendants' transactions with Indiana consumers they have provided neither active assistance consolidating consumer debt nor a low-interest-rate credit card. Instead, the defendants have provided only information describing various credit cards offered by entities unrelated to the defendants, along with other information advising consumers about how to obtain such cards (hereinafter referred to as "information package").

8. At some time following their solicitations of Indiana consumers, the defendants submitted charges of from \$200.00 to \$399.00 to the credit card accounts of the following twenty-five Indiana consumers:

- a. Virginia Young (charged \$399.00);
- b. Larry Eicher (charged \$399.00);
- c. James Pearson (charged \$399.00);
- d. Margaret Carson (charged \$399.00);
- e. Wayne Colpetzer (charged \$399.00);
- f. Diana Jones (charged \$399.00);
- g. Lawrence Allen (charged \$200.00);
- h. Glenda Harding (charged \$399.00);
- i. Ann Schuck (charged \$399.00);
- j. John Barker (charged \$399.00);
- k. Bonnie Gnau (charged \$399.00);
- l. Paul Creager (charged \$399.00);
- m. Judy Kowalski (charged \$200.00);
- n. JoAnna Carter (charged \$399.00);
- o. Joseph Swiezy (charged \$399.00);
- p. Michael Nordyke (charged \$399.00);
- q. Donald Pellow (charged \$399.00);
- r. Raymond Santi (charged \$399.00);
- s. DeMaris Simpson (charged \$399.00);
- t. Mary Deluceny (charged \$399.00);

- u. Robert Zufall (charged \$399.00);
- v. Kathryn Dowell (charged \$399.00);
- w. Dale Ellis (charged \$399.00);
- x. Jack Mann (charged \$399.00); and
- y. John Condiff (charged \$399.00).

9. On at least two occasions, in their transactions with consumers Michael Nordyke and Ann Schuck, the defendants submitted a charge of \$399.00 to the consumer's credit card account after the consumer either failed to authorize the charge or expressly refused to give permission to the defendants to charge the account.

10. The Indiana Telephone Solicitation of Consumers Act, with four statutory exceptions, prohibits merchants who engage telephone solicitors to make a telephone sales call from making or submitting a charge to a consumer's credit card account until the merchant receives a copy of a signed, written contract from the consumer whose account is charged. In each of their transactions with Indiana consumers, the defendants failed to obtain a signed, written contract from the consumer whose credit card account the defendants charged before submitting charges to the consumer's credit card account.

11. The defendants provided a refund policy along with each information package they sold to Indiana consumers. The refund policy was set forth on one page of the information package, and stated in pertinent part as follows:

In the event that you have made an honest effort to use the information provided and include 3 letters of decline for a line of credit, you may return this product for a full refund provided that it is still in perfect condition.

12. For at least some of those consumers who attempted to return the information package to the defendants, the defendants either refused to accept delivery of the returned

package or failed to provide an address to which the consumers could mail the package, thus making it difficult or impossible for consumers who did not wish to keep the information package to return it to the defendants.

Violations of Indiana Consumer Protection Law

13. In the transactions referred to above, the defendants offered a product or service to individual Indiana consumers to be used primarily for personal, family, or household use, thus the transactions are “consumer transactions” under Ind. Code § 24-5-0.5-2(1).

14. Through their solicitations and sales to Indiana consumers, the defendants have acted as “suppliers” within the meaning of Ind. Code § 24-5-0.5-2(3) by regularly engaging in or soliciting consumer transactions.

15. In the transactions referred to above, the defendants have engaged telephone solicitors to make telephone calls for the purpose of soliciting sales of consumer goods or services, thus the defendants have made or caused to be made “telephone sales calls” within the meaning of Ind. Code § 24-4.7-2-9.

Count I – Violations of Ind. Code § 24-5-0.5-3(a)(1)

16. In their consumer transactions with Indiana consumers, the defendants represented that they offered low-interest rate credit cards or active assistance consolidating consumer debt, when in truth and in fact they offered only an information package.

17. The defendants thus misrepresented the benefits, characteristics, or performance of the product or service they offered in their telephone solicitations of Indiana consumers, thereby violating Ind. Code § 24-5-0.5-3(a)(1).

18. In their consumer transactions with Indiana consumers, the defendants submitted charges to the credit card accounts of consumers who did not authorize such charges.

19. The defendants thus misrepresented that the consumers whose accounts they charged without authorization had approved the defendants' product or service, thereby violating Ind. Code § 24-5-0.5-3(a)(1).

Count II – Violations of Ind. Code § 24-5-0.5-3(a)(8)

20. In their consumer transactions with Indiana consumers, the defendants submitted charges to the credit card accounts of consumers who did not authorize such charges.

21. The defendants thus misrepresented that the consumers whose accounts they charged without authorization were obligated to pay for the defendants' product or service, thereby violating Ind. Code § 24-5-0.5-3(a)(8).

22. In their consumer transactions with Indiana consumers, the defendants acted to deny those who purchased their information package the ability to return it to the defendants as the defendants required of consumers who wanted refunds.

23. The defendants' actions made the right or remedy of refund illusory.

24. The defendants thus misrepresented that the consumer transaction involved the right or remedy of a refund, thereby violating Ind. Code § 24-5-0.5-3(a)(8).

Count III – Violations of Ind. Code § 24-5-0.5-10(b)(3)

25. In their consumer transactions with Indiana consumers, the defendants charged at least \$200.00 and as much as \$399.00 for information packages that consisted of information readily available from other sources, after having represented that the consumers would receive either a low-interest rate credit card or active assistance consolidating consumer debt.

26. The defendants thus solicited the consumers to enter into an agreement in which the price was unduly excessive, and in which there was unequal bargaining power leading the consumer to enter into the agreement without knowledge of the terms of the agreement, thereby violating Ind. Code § 24-5-0.5-10(b)(3).

Count IV – Violations of Ind. Code § 24-4.7-4-5

27. In their consumer transactions with Indiana consumers, the nature of the transaction, the contingencies of the refund policy offered by the defendants, and the nature of the defendants themselves were such that the Indiana Telephone Solicitation of Consumers Act required the defendants to obtain a signed, written contract from the consumers who purchased their product or service before charging the consumer's credit card account.

28. The defendants failed to obtain the requisite contract from each consumer before charging the consumer's credit card account, thereby violating Ind. Code § 24-4.7-4-5.

Count V – Defendants Committed the Deceptive Acts Set forth in Counts I through III Knowingly, and Defendants' Actions Constitute Incurable Deceptive Acts

29. The number of the defendants' telephone solicitations to Indiana consumers, the defendants' failure to provide information necessary for Indiana consumers to effect a refund under the terms of the defendants' refund policy, and the defendants' misrepresentation of the product or service they offered to Indiana consumers indicate that the defendants committed their deceptive acts knowingly and as part of a scheme, artifice, or device with intent to defraud or mislead.

Relief Sought

a. The Plaintiff requests, pursuant to Ind. Code § 24-5-0.5-4(c), that the Court permanently enjoin the defendants from the following in any consumer transaction with Indiana consumers:

- i. Misrepresenting that the subject of the consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have;
- ii. Misrepresenting that the consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations; and
- iii. Soliciting a person to enter into a contract or agreement in which the price is unduly excessive and in which there is unequal bargaining power leading the person to enter into the contract or agreement unwillingly or without knowledge of its terms;
- iv. Violating any provision of the Indiana Deceptive Consumer Sales Act, Ind. Code §§ 24-5-0.5-1 through -12; and
- v. Violating any provision of the Indiana Telephone Solicitation of Consumers Act, Ind. Code §§ 24-4.7-1-1 through 24-4.7-5-6.

b. The Plaintiff requests, pursuant to Ind. Code § 24-4.7-5-2, that the Court permanently enjoin the defendants from failing to obtain a signed, written contract from consumers before submitting a charge to the consumers' credit card accounts in any transaction during or resulting from a telephone sales call, unless such transaction falls within an applicable exemption.

c. The Plaintiff requests, pursuant to Ind. Code § 24-5-0.5-4(c), that the Court award consumer restitution in an amount equal to the full amount paid by each consumer charged by the defendants for the information package, or a similar product, along with any ancillary costs incurred by each consumer as a result of the defendants' deceptive acts, including but not limited to, interest fees.

d. The Plaintiff requests, pursuant to Ind. Code § 24-4.7-5-2, that the Court order the defendants to pay to the Attorney General all money they obtained through violations of the Indiana Telephone Solicitation of Consumers Act.

e. The Plaintiff requests, pursuant to Ind. Code §§ 24-5-0.5-4(c) and 24-4.7-5-2, that the Court award costs to the Office of the Attorney General for its investigation and prosecution of this matter.

f. The Plaintiff requests, pursuant to Ind. Code § 24-4.7-5-2, that the Court award the Office of the Attorney General its reasonable attorneys fees.

g. The Plaintiff requests, pursuant to Ind. Code § 24-5-0.5-4(c), that the Court award civil penalties in the amount of \$500.00 for each of the defendants' knowing violations of the Indiana Deceptive Consumer Sales Act.

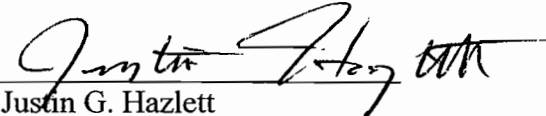
h. The Plaintiff requests, pursuant to Ind. Code § 24-5-0.5-8, that the Court award civil penalties in the amount of \$500.00 for each of the defendants' incurable deceptive acts.

i. The Plaintiff requests, pursuant to Ind. Code § 24-4.7-5-2, that the Court award civil penalties in the amount of Ten Thousand Dollars (\$10,000.00) for the defendant's first violation of the Indiana Telephone Solicitation of Consumers Act and Twenty Five Thousand Dollars (\$25,000.00) for each of the defendants' subsequent violations of the Indiana Telephone Solicitation of Consumers Act.

j. The Plaintiff requests that the Court grant all other just and proper relief.

Respectfully submitted,

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